



CASE REPORT

1. Complaint reference number	178/07
2. Advertiser	Nestle Australia Ltd (Kit Kat)
3. Product	Food & Beverages
4. Type of advertisement	TV
5. Nature of complaint	Advertising to Children Code – Safety – section 2.4
6. Date of determination	Tuesday, 12 June 2007
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement begins in a supermarket setting, where two little boys wearing identical superhero costumes see each other and sneak away to play in a park while their mothers are loading groceries into their cars. At home with one of the boys, the mother breaks open a Kit Kat block to share with the family as they all gather round the table. Seeing the difficulty her young son is having in getting the chocolate into his mouth with his superhero costume still on, the mother smiles and removes the hood, revealing not her own son, but a stranger - the "other" superhero brought home by mistake. A male voiceover explains "The new Kit Kat Family Block with irresistibly crisp wafer fingers, smothered in creamy milk chocolate...It makes you wish you were part of the family."

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

I found it upsetting because there is no comment on what happened to the child. As a mum I would find what they describe distressing. I also do not think it is appropriate that children watch advertisements where they are being lured away by strangers. Not appropriate content.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

*We do not believe this ad contravenes the spirit of Section 2 under the AANA Advertiser Code of Ethics. This ad is a light-hearted, amusing treatment of a mistaken identity as in, for example, the much-loved classic family movie, *The Parent Trap*. The wrong child responds to the parent's call, and all is revealed when his hood is pulled off in the kitchen. This is a functional family situation where, when the mistake is discovered, the parents are obviously bemused. A reasonable person would assume they will then act in the normal responsible fashion to remedy the circumstances. The child is not in any way harmed and is equally amused by his good fortune.*

THE DETERMINATION

The Board first considered whether this advertisement could be considered within the AANA Advertising to Children Code (the Children's Code). To come within the Children's Code, the material being considered must be an "advertisement". The Children's Code defines an "Advertisement" as follows:

"matter which is published or broadcast in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated

to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct”.

The Board decided that the material in question was broadcast in all of Australia or a substantial section of Australia for valuable consideration, given that it was being broadcast on television in Australia . The Board determined that the material draws the attention of the public or a segment of it to a “product” being Kit Kat Family Block “in a manner calculated to promote...that product”.

The Board then needed to determine whether the advertisement is an “Advertisement to Children”, which is defined in the Children’s Code as meaning:

“Advertisements which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product”.

“Children” are defined in the Children’s Code as being 14 years old or younger. The Board determined that although the product was a product that children would enjoy and noted that the lighthearted music, and images of children dressed as superheroes would be an advertisement that could be directed towards children but was not necessarily 'primarily' to children.

The Board also considered whether the advertisement is for a “Product”. “Product” is defined in the Children’s Code as *meaning*;

“goods, services and facilities which are targeted toward and have principal appeal to Children”.

The Board determined that the Kit Kat Family Block is a “good” that can be targeted toward children, however again the Board considered that the product, particularly in the family block, was equally appealing to older children and adults.

The Board noted that the complaint was made in relation to the advertisement being shown at 7.30 at night during Big Brother. The Board considered that this was further indication that this advertisement was not primarily directed at children under the age of 14. The Board determined that the Children's Code did not apply.

The Board then considered whether the advertisement breached any of the provisions of the AANA Advertiser Code of Ethics (the Code). The Board considered whether the advertisement depicted material contrary to prevailing community standards on health and safety.

The Board noted the complainant's concern that the advertisement does not reveal what happened to the child left behind in the playground which was distressing and that the advertisement depicts a child luring another child away from its parents.

Recognising that the target audience for this advertisement is older children and adults, not young children, the Board considered that the advertisement was clearly intended to be humorous. The Board noted that the advertisement was light hearted and playful and that the music and tone of the advertisement was fun with no sinister or scary overtones. The Board considered that the image of one child tricking another child in order to get the chocolate was not a depiction of material that depicted dangerous or incited unsafe behaviour.

In the context of this advertisement the Board found this depiction to be clearly a fantasy and a humorous depiction of a way of getting the advertised product. The Board determined that the advertisement did not breach clause 2.6 of the Code.

Further finding that the advertisement did not breach any other provisions of the Code the Board dismissed the complaint.